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CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2563

**Introduced by Assembly Member Goldsmith
(Principal coauthor: Assembly Member Alby)**

(Principal coauthor: Senator Kopp)

**(Coauthors: Assembly Members Baldwin, Baugh, Bordonaro,
Bowen, Bowler, Cunneen, Gallegos, Granlund, Harvey,
Hawkins, House, Kuykendall, Margett, Rainey, Richter,
and Woods)**

(Coauthors: Senators Costa and Johnson)

February 21, 1996

An act to amend Section 68511.3 of the Government Code,
and to amend Section 2601 of the Penal Code, relating to
inmate litigants.

LEGISLATIVE COUNSEL'S DIGEST

AB 2563, as amended, Goldsmith. Inmate litigants.

(1) Existing law requires the Judicial Council to formulate and adopt uniform forms and rules of court for litigants proceeding in forma pauperis.

This bill would provide that a person sentenced to imprisonment in a state prison or confined in a county jail who, during that period of imprisonment or confinement, applies to proceed in forma pauperis in a civil action or appeal of a civil judgment shall pay the full amount of the filing fee, as specified. This bill would require the Department of Corrections to certify a statement of account for any sums due to the inmate for a prescribed period.

(2) Existing law provides that a person sentenced to imprisonment in a state prison has the right to initiate civil actions, subject to a \$3 filing fee to be collected by the Department of Corrections.

This bill would provide that this \$3 filing fee is in addition to payment of any other authorized court filing fee.

(3) This bill would incorporate additional changes in Section 68511.3 of the Government Code proposed by AB 2667, to be operative only if AB 2667 and this bill are both chaptered and become effective on January 1, 1997, and this bill is chaptered last.

(4) *This bill would incorporate additional changes in Section 2601 of the Penal Code proposed by SB 1221 to be operative only if this bill is chaptered and both bills become effective on or before January 1, 1997.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 68511.3 of the Government
2 Code is amended to read:
3 68511.3. (a) The Judicial Council shall formulate and
4 adopt uniform forms and rules of court for litigants
5 proceeding in forma pauperis. These rules shall provide
6 for all of the following:
7 (1) Standard procedures for considering and
8 determining applications for permission to proceed in
9 forma pauperis, including, in the event of a denial of such



1 permission, a written statement detailing the reasons for
2 denial and an evidentiary hearing where there is a
3 substantial evidentiary conflict.

4 (2) Standard procedures to toll relevant time
5 limitations when a pleading or other paper accompanied
6 by such an application is timely lodged with the court and
7 delay is caused due to the processing of the application to
8 proceed in forma pauperis.

9 (3) Proceeding in forma pauperis at every stage of the
10 proceedings at both the appellate and trial levels of the
11 court system.

12 (4) The confidentiality of the financial information
13 provided to the court by these litigants.

14 (5) That the court may authorize the clerk of the
15 court, county financial officer, or other appropriate
16 county officer to make reasonable efforts to verify the
17 litigant's financial condition without compromising the
18 confidentiality of the application.

19 (6) That permission to proceed in forma pauperis be
20 granted to both of the following:

21 (A) Litigants who declare under penalty of perjury
22 that they are receiving benefits pursuant to the
23 Supplemental Security Income (SSI) and State
24 Supplemental Payments (SSP) programs (Sections
25 12200-12205 of the Welfare and Institutions Code), the
26 Aid to Families with Dependent Children (AFDC)
27 program (42 U.S.C. Sec. 601 et seq.), the Food Stamp
28 program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of
29 the Welfare and Institutions Code.

30 (B) Litigants who declare under penalty of perjury
31 that their monthly income is 125 percent or less of the
32 current monthly poverty line annually established by the
33 Secretary of Health and Human Services pursuant to the
34 Omnibus Budget Reconciliation Act of 1981, as amended,
35 and who submit a financial statement setting forth each
36 item which makes up their monthly income in support of
37 the averment as part of the declaration.

38 The rules shall further provide that the court shall grant
39 permission to proceed in forma pauperis in any other
40 instance in which, in its discretion, this permission is

1 appropriate because the litigant is unable to proceed
2 without using money which is necessary for the use of the
3 litigant or the litigant's family to provide for the common
4 necessities of life.

5 (b) The forms and rules shall provide for the disclosure
6 of both of the following:

7 (1) The current address of the litigant.

8 (2) The date of birth of the litigant.

9 The information furnished by the litigant shall be used
10 by the court in determining his or her ability to pay all or
11 a portion of the fees and costs.

12 (c) At any time within three years after the court has
13 granted a litigant permission to proceed in forma
14 pauperis, the clerk of the court, county financial officer,
15 or other appropriate county officer may notify the court
16 of any changed financial circumstances which may
17 enable the litigant to pay all or a portion of the fees and
18 costs which had been waived. The court may authorize
19 the clerk of the court, county financial officer or other
20 appropriate county officer to require the litigant to
21 appear before and be examined by the court. However,
22 no litigant shall be required to appear more than once in
23 any four-month period. The court may then order the
24 litigant to pay to the county such sum and in such manner
25 as the court believes is compatible with the litigant's
26 financial ability.

27 In any action or proceeding in which the litigant whose
28 fees and costs have been waived would have been
29 entitled to recover those fees and costs from another
30 party to the action or proceeding had they been paid, the
31 court may assess the amount of the waived fees and costs
32 against the other party and order the other party to pay
33 that sum to the county or to the clerk and serving and
34 levying officers respectively, or the court may order the
35 amount of the waived fees and costs added to the
36 judgment and so identified by the clerk.

37 Execution may be issued on any order provided for in
38 this subdivision in the same manner as on a judgment in
39 a civil action. When an amount equal to the sum due and
40 payable to the clerk has been collected upon the

1 judgment, these amounts shall be remitted to the clerk
2 within 30 days. Thereafter, when an amount equal to the
3 sum due to the serving and levying officers has been
4 collected upon the judgment, these amounts shall be due
5 and payable to those officers and shall be remitted within
6 30 days. If the remittance is not received by the clerk
7 within 30 days or there is a filing of a partial satisfaction
8 of judgment in an amount at least equal to the fees and
9 costs payable to the clerk or a satisfaction of judgment has
10 been filed, notwithstanding any other provision of law,
11 the court may issue an abstract of judgment, writ of
12 execution, or both for recovery of those sums, plus the
13 fees for issuance and execution and an additional fee for
14 administering this section. The county board of
15 supervisors shall establish a fee, not to exceed actual costs
16 of administering this subdivision and in no case exceeding
17 twenty-five dollars (\$25), which shall be added to the writ
18 of execution.

19 (d) The clerk of the court may dispose of applications
20 for in forma pauperis status three years after the date of
21 filing without the need for microfilming, or the clerk may
22 dispose of applications immediately upon their being
23 microfilmed.

24 (e) Notwithstanding subdivision (a), a person who is
25 sentenced to imprisonment in a state prison or confined
26 in a county jail and, during the period of imprisonment
27 or confinement, files a civil action or notice of appeal of
28 a civil action in forma pauperis shall be required to pay
29 the full amount of the filing fee to the extent provided in
30 this subdivision.

31 (1) In addition to the form required by this section for
32 filing in forma pauperis, an inmate shall file a copy of a
33 statement of account for any sums due to the inmate for
34 the six-month period immediately preceding the filing of
35 the civil action or notice of appeal of a civil action. This
36 copy shall be certified by the appropriate official of the
37 Department of Corrections.

38 (2) Upon filing the civil action or notice of appeal of a
39 civil action, the court shall assess, and when funds exist,
40 collect, as a partial payment of any required court fees, an

1 initial partial filing fee of 20 percent of the greater of one
2 of the following:

3 (A) The average monthly deposits to the inmate's
4 account.

5 (B) The average monthly balance in the inmate's
6 account for the six-month period immediately preceding
7 the filing of the civil action or notice of appeal.

8 (3) After payment of the initial partial filing fee, the
9 inmate shall be required to make monthly payments of 20
10 percent of the preceding month's income credited to the
11 inmate's account. The Department of Corrections shall
12 forward payments from this account to the clerk of the
13 court each time the amount in the account exceeds ten
14 dollars (\$10) until the filing fees are paid.

15 (4) In no event shall the filing fee collected pursuant
16 to this subdivision exceed the amount of fees permitted
17 by law for the commencement of a civil action or an
18 appeal of a civil action.

19 (5) In no event shall an inmate be prohibited from
20 bringing a civil action or appeal of a civil action solely
21 because the inmate has no assets and no means to pay the
22 initial partial filing fee.

23 SEC. 1.5. Section 68511.3 of the Government Code is
24 amended to read:

25 68511.3. (a) The Judicial Council shall formulate and
26 adopt uniform forms and rules of court for litigants
27 proceeding in forma pauperis. These rules shall provide
28 for all of the following:

29 (1) Standard procedures for considering and
30 determining applications for permission to proceed in
31 forma pauperis, including, in the event of a denial of such
32 permission, a written statement detailing the reasons for
33 denial and an evidentiary hearing where there is a
34 substantial evidentiary conflict.

35 (2) Standard procedures to toll relevant time
36 limitations when a pleading or other paper accompanied
37 by such an application is timely lodged with the court and
38 delay is caused due to the processing of the application to
39 proceed in forma pauperis.

1 (3) Proceeding in forma pauperis at every stage of the
2 proceedings at both the appellate and trial levels of the
3 court system.

4 (4) The confidentiality of the financial information
5 provided to the court by these litigants.

6 (5) That the court may authorize the clerk of the
7 court, county financial officer, or other appropriate
8 county officer to make reasonable efforts to verify the
9 litigant's financial condition without compromising the
10 confidentiality of the application.

11 (6) That permission to proceed in forma pauperis be
12 granted to all of the following:

13 (A) Litigants who are receiving benefits pursuant to
14 the Supplemental Security Income (SSI) and State
15 Supplemental Payments (SSP) programs (Sections
16 12200–12205 of the Welfare and Institutions Code), the
17 Aid to Families with Dependent Children (AFDC)
18 program (42 U.S.C. Sec. 601 et seq.), the Food Stamp
19 program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of
20 the Welfare and Institutions Code.

21 (B) Litigants whose monthly income is 125 percent or
22 less of the current monthly poverty line annually
23 established by the Secretary of Health and Human
24 Services pursuant to the Omnibus Budget Reconciliation
25 Act of 1981, as amended.

26 (C) Other persons when in the court's discretion, this
27 permission is appropriate because the litigant is unable to
28 proceed without using money which is necessary for the
29 use of the litigant or the litigant's family to provide for the
30 common necessities of life.

31 (b) (1) Litigants who apply for permission to proceed
32 in forma pauperis pursuant to subparagraph (A) of
33 paragraph (6) of subdivision (a) shall declare under
34 penalty of perjury that they are receiving such benefits
35 and may voluntarily provide the court with their social
36 security number to permit the court to verify the
37 applicant's receipt of public assistance. The court may
38 require any applicant, except a defendant in an unlawful
39 detainer action, who chooses not to disclose his or her
40 social security number for verification purposes to attach

1 to the application documentation of benefits to support
2 the claim and all other financial information on a form
3 promulgated by the Judicial Council for this purpose.

4 (2) Litigants who apply for permission to proceed in
5 forma pauperis pursuant to subparagraph (B) or (C) of
6 paragraph (6) of subdivision (a) shall file a financial
7 statement under oath on a form promulgated by, and
8 pursuant to rules adopted by, the Judicial Council.

9 (c) The forms and rules adopted by the Judicial
10 Council shall provide for the disclosure of the following
11 information about the litigant:

12 (1) Current street address.

13 (2) Date of birth.

14 (3) Occupation and employer.

15 (4) Monthly income and expenses.

16 (5) Address and value of any real property owned
17 directly or beneficially.

18 (6) Personal property with a value that exceeds five
19 hundred dollars (\$500).

20 The information furnished by the litigant shall be used
21 by the court in determining his or her ability to pay all or
22 a portion of the fees and costs.

23 (d) At any time after the court has granted a litigant
24 permission to proceed in forma pauperis and prior to final
25 disposition of the case, the clerk of the court, county
26 financial officer, or other appropriate county officer may
27 notify the court of any changed financial circumstances
28 which may enable the litigant to pay all or a portion of the
29 fees and costs which had been waived. The court may
30 authorize the clerk of the court, county financial officer,
31 or other appropriate county officer to require the litigant
32 to appear before and be examined by the person
33 authorized to ascertain the validity of their indigent
34 status. However, no litigant shall be required to appear
35 more than once in any four-month period. A litigant
36 proceeding in forma pauperis shall notify the court within
37 five days of any settlement or monetary consideration
38 received in settlement of this litigation and of any other
39 change in financial circumstances that affects the
40 litigant's ability to pay court fees and costs. After the

1 litigant either (1) appears before and is examined by the
2 person authorized to ascertain the validity of his or her
3 indigent status or (2) notifies the court of a change in
4 financial circumstances, the court may then order the
5 litigant to pay to the county such sum and in such manner
6 as the court believes is compatible with the litigant's
7 financial ability.

8 In any action or proceeding in which the litigant whose
9 fees and costs have been waived would have been
10 entitled to recover those fees and costs from another
11 party to the action or proceeding had they been paid, the
12 court may assess the amount of the waived fees and costs
13 against the other party and order the other party to pay
14 that sum to the county or to the clerk and serving and
15 levying officers respectively, or the court may order the
16 amount of the waived fees and costs added to the
17 judgment and so identified by the clerk.

18 Execution may be issued on any order provided for in
19 this subdivision in the same manner as on a judgment in
20 a civil action. When an amount equal to the sum due and
21 payable to the clerk has been collected upon the
22 judgment, these amounts shall be remitted to the clerk
23 within 30 days. Thereafter, when an amount equal to the
24 sum due to the serving and levying officers has been
25 collected upon the judgment, these amounts shall be due
26 and payable to those officers and shall be remitted within
27 30 days. If the remittance is not received by the clerk
28 within 30 days or there is a filing of a partial satisfaction
29 of judgment in an amount at least equal to the fees and
30 costs payable to the clerk or a satisfaction of judgment has
31 been filed, notwithstanding any other provision of law,
32 the court may issue an abstract of judgment, writ of
33 execution, or both for recovery of those sums, plus the
34 fees for issuance and execution and an additional fee for
35 administering this section. The county board of
36 supervisors shall establish a fee, not to exceed actual costs
37 of administering this subdivision and in no case exceeding
38 twenty-five dollars (\$25), which shall be added to the writ
39 of execution.

(e) Notwithstanding subdivision (a), a person who is sentenced to imprisonment in a state prison or confined in a county jail and, during the period of imprisonment or confinement, files a civil action or notice of appeal of a civil action in forma pauperis shall be required to pay the full amount of the filing fee to the extent provided in this subdivision.

(1) In addition to the form required by this section for filing in forma pauperis, an inmate shall file a copy of a statement of account for any sums due to the inmate for the six-month period immediately preceding the filing of the civil action or notice of appeal of a civil action. This copy shall be certified by the appropriate official of the Department of Corrections.

(2) Upon filing the civil action or notice of appeal of a civil action, the court shall assess, and when funds exist, collect, as a partial payment of any required court fees, an initial partial filing fee of 20 percent of the greater of one of the following:

(A) The average monthly deposits to the inmate's account.

(B) The average monthly balance in the inmate's account for the six-month period immediately preceding the filing of the civil action or notice of appeal.

(3) After payment of the initial partial filing fee, the inmate shall be required to make monthly payments of 20 percent of the preceding month's income credited to the inmate's account. The Department of Corrections shall forward payments from this account to the clerk of the court each time the amount in the account exceeds ten dollars (\$10) until the filing fees are paid.

(4) In no event shall the filing fee collected pursuant to this subdivision exceed the amount of fees permitted by law for the commencement of a civil action or an appeal of a civil action.

(5) In no event shall an inmate be prohibited from bringing a civil action or appeal of a civil action solely because the inmate has no assets and no means to pay the initial partial filing fee.

1 SEC. 2. Section 2601 of the Penal Code is amended to
2 read:

3 2601. Subject only to the provisions of that section,
4 each person described in Section 2600 shall have the
5 following civil rights:

6 (a) To inherit, own, sell, or convey real or personal
7 property, including all written and artistic material
8 produced or created by the person during the period of
9 imprisonment. However, to the extent authorized in
10 Section 2600, the Department of Corrections may restrict
11 or prohibit sales or conveyances that are made for
12 business purposes.

13 (b) To correspond, confidentially, with any member
14 of the State Bar or holder of public office, provided that
15 the prison authorities may open and inspect incoming
16 mail to search for contraband.

17 (c) (1) To purchase, receive, and read any and all
18 newspapers, periodicals, and books accepted for
19 distribution by the United States Post Office. Pursuant to
20 this section, prison authorities may exclude any of the
21 following matter:

22 (A) Obscene publications or writings, and mail
23 containing information concerning where, how, or from
24 whom this matter may be obtained.

25 (B) Any matter of a character tending to incite
26 murder, arson, riot, violent racism, or any other form of
27 violence.

28 (C) Any matter concerning gambling or a lottery.

29 (2) Nothing in this section shall be construed as
30 limiting the right of prison authorities to do the following:

31 (A) Open and inspect any and all packages received
32 by an inmate.

33 (B) Establish reasonable restrictions as to the number
34 of newspapers, magazines, and books that the inmate may
35 have in his or her cell or elsewhere in the prison at one
36 time.

37 (d) To have personal visits. However, the department
38 may provide any restrictions that are necessary for the
39 reasonable security of the institution.

(e) To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the Department of Corrections, in addition to any other filing fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

(f) To marry.

(g) To create a power of appointment.

(h) To make a will.

(i) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.

SEC. 3. *Section 2601 of the Penal Code is amended to read:*

2601. Subject only to the provisions of that section, each person described in Section 2600 shall have the following civil rights:

(a) ~~To~~ *Except as provided in Section 2225 of the Civil Code, to* inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by ~~such~~ *the* person during the period of imprisonment. However, to the extent authorized in Section 2600, the Department of Corrections may restrict or prohibit sales or conveyances that are made for business purposes.

(b) To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.

(c) (1) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:

(A) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.

(B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.

(C) Any matter concerning gambling or a lottery.

(2) Nothing in this section shall be construed as limiting the right of prison authorities to do the following:

(A) Open and inspect any and all packages received by an inmate.

(B) Establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.

~~(d) To have personal visits. However, the department may provide any restrictions that are necessary for the reasonable security of the institution.~~

~~(e)~~ To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the Department of Corrections, *in addition to any other filing fee authorized by law*, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.

~~(f)~~

(e) To marry.

~~(g)~~

(f) To create a power of appointment.

~~(h)~~

(g) To make a will.

~~(i)~~

(h) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 68511.3 of the Government Code proposed by both this bill and AB 2667. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 68511.3 of the Government Code, and (3) this bill is enacted after AB 2667, in which case Section 1 of this bill shall not become operative.

SEC. 5. *Section 3 of this bill incorporates amendments to Section 2601 of the Penal Code proposed by both this bill and SB 1221. Section 3 shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1996, (2) each bill amends Section 2601 of the Penal Code, and (3) this bill is enacted after SB*

1 *1221, in which case Section 2 of this bill shall not become*
2 *operative.*

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